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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/509,421

08/02/2005

Motoyuki Sugiura

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EXAMINER

MULLIS, JEFFREY C

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

06/26/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,421	Applicant(s) SUGIURA ET AL.	
	Examiner Jeffrey C. Mullis	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The Office action of 2-20-09 was non FINAL. Therefore applicants amendment which is in proper form has been entered as a matter of right.

Claims 15-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants limitation added in the amendment of 5-20-09 is unclear in that defines the alpha olefin monomer as a "polymer", an impossibility as monomers and polymers are necessarily different.

Claims 15-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukushima (JP 2002-020576).

Patentees disclose a composition which is produced by polymerization of polymerizable organic peroxides in the presence of a propylene polymer is reacted with an acrylic polymer and crosslinker. Note the CAPLUS abstract. Note also the Patent Abstracts of Japan Abstract for use of a "graft copolymer and the acrylic rubber".

Hydroxypropylmethacrylate may be used to produce the graft copolymer at paragraph 22. Particle sizes of the two components are 0.1-1 micron in paragraph 31. Applicants "acrylic rubber" monomers and percentages thereof are disclosed in paragraphs 37 and 38 which also refers to the monomers as being useful for producing "acrylic rubber".

The two components are reacted together with "cross linking agent" and a "bridge accelerator" encompassing applicants "co-crosslinking agent" at paragraph 43. The acrylic rubber may contain the crosslinker of the "vinyl system copolymer" (paragraph

39) such as include allyl methacrylate at paragraph 26. Note the table on page 12 for use of "MEA" (presumably methoxyethylmethacrylate) and "AN".

No examples are present in the patent having all of applicants components present in combination in applicants amounts. However to arrive at applicants composition by selecting from the various disclosures of the reference and combining them would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of adequate results absent any showing of surprising or unexpected results. Paragraph 15 of the reference discloses that the olefin polymer may be polypropylene or ethylene propylene rubber and since paragraph 15 discloses nothing about these materials being block or containing sequences of different units those skilled in the art would interpret such polymers are random such as all claims read on. Since polypropylene is 100% propylene and since it is disclosed that ethylene propylene rubber is workable, those skilled in the art would assume that ethylene propylene polymers with any amount of ethylene is useable and would be especially motivated to use high propylene contents (and low ethylene) in patentees ethylene propylene polymers as in the instant claims given that 100% propylene polymers are specifically disclosed by the reference as workable as well as ethylene propylene polymers absent any showing of surprising or unexpected results.

Applicant's arguments filed 5-20-09 have been fully considered but they are not persuasive. The monomers (including acrylonitrile) set out in paragraph 38 of the reference relied upon are comonomers for use with the acrylic ester monomers of paragraph 37 for formation of the acrylic rubber of the reference. As set out in the

Art Unit: 1796

penultimate sentence of paragraph 38 "these amounts of copolymerization, 40 or less % of the weight is desirable". Hence this paragraph implies use of a total of 40% or less of monomers in paragraph 38 and 60% or greater of those in paragraph 37 and such total amounts of monomers encompass compositions with applicants specific monomers.

Note that all of applicants specific monomers (except possibly for allyl methacrylate) are disclosed in Table 1 in paragraph 78 of the reference and in applicants amounts (although of course there is no specific example in the table in which all of applicants monomeric components are present simultaneously) and given the disclosure of paragraphs 37 and 38 of the reference that "two sorts or more" of monomers may be used, applicants combination of monomers in applicants amounts is suggested.

Paragraph 15 of the reference discloses that the olefin polymer may be polypropylene or ethylene propylene rubber and since paragraph 15 discloses nothing about these materials being block or containing sequences of different units those skilled in the art would interpret such polymers are random such as all claims read on. Since polypropylene is 100% propylene and since it is disclosed that ethylene propylene rubber is workable, those skilled in the art would assume that ethylene propylene polymers with any amount of ethylene is useable and would be especially motivated to use high propylene contents (and low ethylene) in patentees ethylene propylene polymers as in the instant claims given that 100% propylene polymers are specifically disclosed by the reference as workable as well as ethylene propylene polymers.

Applicants own specification in fact discloses superior oil resistance for polypropylene as does patentees at paragraph 15 of the Japanese patent and nothing in applicants

Art Unit: 1796

specification indicates better oil resistance for ethylene propylene polymers as opposed to polypropylene.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis
9-5 pm, M-F, at telephone number 571 272 1075.

Jeffrey C. Mullis
Primary Examiner
Art Unit 1796

JCM

6-24-09

Application/Control Number: 10/509,421
Art Unit: 1796

Page 6

/Jeffrey C. Mullis/

Primary Examiner, Art Unit 1796